

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1804 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

-----  
ABDUL HANIF AHMAD KHAN CHAUHAN

Versus

SUPDT OF POLICE

-----  
Appearance:

MR JS YADAV for Petitioner

None present for Respondent No. 1, 2, 3

-----  
CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 09/02/98

ORAL JUDGEMENT

1. This petition has been filed by the petitioner, a police constable of the Police Department of the Government of Gujarat, and challenge has been made to the order, annexure 'A' dated 4-3-1986 of the respondents under which Rs.3317-50 drawn by the petitioner towards the T.A. were ordered to be recovered from his salary.

2. This T.A. has been drawn by the petitioner for

discharging duties as an Orderly at the residence of Shri D.P. Buch, Deputy Superintendent of Police, Western Railway, for the period from 1-1-1983 to 30-12-1983. The petitioner has discharged his duties as Orderly at the residence of the said officer till 30th April, 1984 and he prayed for the direction to the respondents for payment of T.A. for the period from 1-1-1984 to 30-4-1984. After filing of this special civil application, another order came to be passed under which this amount aforesaid was ordered to be recovered at the rate of Rs.100/- p.m. for 33 months and the last installment of Rs.17-50ps. Annexure 'C' has also been challenged which is an order dated 21st May, 1985 under which it has been held that the petitioner is not eligible to draw T.A..

3. In this petition, notice has been issued on 18-3-1986 and thereafter on 26-10-1986 rule was made and interim relief in terms of para-16(c) has been granted. Para-16(c) reads as under:

Pending admission, hearing and final disposal of this petition, be pleased to stay the operation of the orders at annexure 'A' and suspend its implementation, execution and enforcement and further be pleased to restrain the respondents from deducting Rs.100/- from the salary of the petitioner of March, 1986 onwards;

4. So the recovery as ordered of the amount of T.A. received by the petitioner could not have been effected because of the interim relief granted by this Court.

5. The learned counsel for the petitioner raised manifold contentions but it is not necessary to advert to all those contentions, as in my view, this special civil application deserves to be accepted only on the ground that the petitioner was held to be not eligible for T.A. and further the order of recovery of T.A. amount paid to him have been passed without giving notice or opportunity of hearing to him. These orders have civil consequences, which result in the recovery of the amount of money from the salary of the petitioner. It will further reduce the salary of the petitioner. So when the orders have financial implications and heavy amount is sought to be recovered from the petitioner, it was incumbent upon the respondents to give notice and an opportunity of hearing to the petitioner, which precisely has not been done in the present case.

6. Only on this short ground, this petition is allowed and the orders annexures 'A', 'C' and 'E' dated

4-3-1986, 21-5-1985 and 30-7-1984 respectively are quashed and set aside. Rule is made absolute.

7. However, the acceptance of this special civil application will not come in the way of the respondents to pass fresh orders in accordance with law after giving notice and an opportunity of hearing to the petitioner, if they so desire, but this exercise has to be undertaken within reasonable time, say within four months from the date of receipt of writ of this order.

\*\*\*\*\*

zgs/-